

REMARKS

Claims 1-137 are subject to restriction and/or election requirement. Claims 1-137 are presently pending in the application. The Applicants have elected the claims of Group II, claims 37-137, with traverse, and Species IIJ, drawn to claims 81-96, without traverse. Favorable reconsideration of the application in view of the following remarks is respectfully requested.

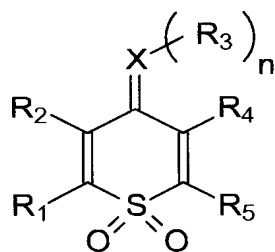
Restriction under 35 USC § 121:

The Examiner has required restriction to one of the following inventions under 35 U.S.C. § 121:

- I. Claims 1-36, drawn to an electrochromic material, classified in class 540, subclass 1.
- II. Claims 37-137, drawn to an electrochromic device, classified in class 359, subclass 265,

indicating that the Inventions I and II are related as combination and subcombination and inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility. by itself or in other combinations (MPEP § 806.05(c)). The Examiner indicates that, in the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the electrochromic material does not require the particulars of the claimed electrochromic device, including the claimed electrolyte, electrodes and electron donor and the subcombination has separate utility such as color changing chemical.

Applicants elect the claims of Group II, claims 37-137, with traverse. The Applicants believe that the Examiner has correctly identified the relationship between the inventions of Group I and Group II. However, the combination of claim 37, which requires a substrate, at least two electrodes, an electrolyte positioned between the electrodes, an electron donor, also requires “a substituted-1,1-dioxo-thiopyran of the general structure I:



I

wherein:

X is carbon, nitrogen, oxygen, or sulfur;

n is 0, 1 or 2;

R3 is independently an electron withdrawing group or a substituted or unsubstituted alky or aryl group;

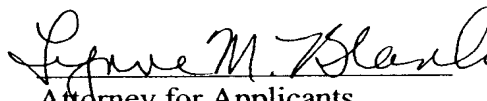
R1 and R5 each independently represent a substituted or unsubstituted alkyl group, a substituted or unsubstituted aryl group, or a substituted or unsubstituted heterocyclic group; and

R2 and R4 each independently represent hydrogen, or an electron withdrawing group, or a substituted or unsubstituted alkyl group.”, the identical electrochromic material as required by the subcombination claim 1. MPEP 806.05(c) indicates that, when a combination as claimed requires the details of subcombination as separately claimed, there is usually no evidence that the combination is patentable without the details of the subcombination. The inventions are not distinct and a requirement for restriction must not be made or maintained, even if the subcombination has separate utility. Here, the identical electrochromic material of claim 1 is required for use in the device of combination claim 37.

The Examiner has also required a species restriction. Applicants elect the species claims of Species III, drawn to claims 81-96, without traverse.

It is believed that the foregoing is a complete response to the Office Action and that the claims are in condition for allowance. Favorable reconsideration and early passage to issue is therefore earnestly solicited.

Respectfully submitted,


Attorney for Applicants
Registration No. 42,334

Lynne M. Blank/ct
Rochester, NY 14650
Telephone: 585-477-7418
Facsimile: 585-477-1148

If the Examiner is unable to reach the Applicant(s) Attorney at the telephone number provided, the Examiner is requested to communicate with Eastman Kodak Company Patent Operations at (585) 477-4656.